BEFORE THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

Writ Petition No. 4296 /94

Petitioner ... Kanhaiya Lal Mehar

V/s

Respondents ... Registrar, High Court and another

Details of petition

1 Particulars of the Petitioner :

Kanhaiya Lal Mehar son of late Damrudhar Mehar, aged about 44 years, occupation ex employee on the post of Process Writer Civil Court, District and Sessions Judge, Raigarh, resident of Chakradharnagar, Mohalla Sethi Nagar, near Shiv Mandir, Raigarh, M.P.

Attested
A.K. 29/9/12

2 Particulars of the Respondents :

1 The Registrar, High Court of Madhya Pradesh Jabalpur.

2 The District Judge, Raigarh, M.P.

Attested
A/(15).28.8

1. High Court of M.P. through Registrar General of M.P. High Court Jabalpur (M.P.).

3. High Court of Chhattisgarh through Registrar General of Chhattisgarh High Court, Bilaspur (C.G.).

Received in office of Hon'ble on 28.08.2002

AFR

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

Single Bench: Hon'ble Shri Satish K. Agnihotri, J.

W. P. No. 4296 of 1994

Petitioner : Kanhaiya Lal Mehar

Versus

Respondents : Registrar, High Court & others

Post for order on 5th December, 2006

Sd/-
Satish K. Agnihotri
Judge

(269)

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

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W. P. No. 4296 of 1994

Petitioner : Kanhaiya Lal Mehar

Versus

Respondents : Registrar, High Court & others

Shri Awadh Tripathi, counsel for the petitioner.
Shri Manindra Shrivastava, Senior counsel with Shri Ashish Shrivastava, counsel for the respondent No. 1.
None appears for the respondents No. 2 and 3.

ORDER

(5th December, 2006)

1. In the present writ petition, the petitioner challenges the validity of the impugned order dated 8.2.1993 (Annexure A/14), whereby the petitioner was retired compulsorily and the appellate order dated 8th June, 1994 (Annexure A/16) dismissing the appeal filed by the petitioner.

2. The indisputable facts in brief are that the petitioner was working on the post of Amin (Nazarat) in the District Civil Court, Raigarh. The petitioner made complaints to the District and Sessions Judge, Raigarh by letter dated 21.11.1989 (Annexure A/1) and by letter dated 15.3.1990 (Annexure A/2) against the Nazir, Shri Nandlal Mourya to the effect that the Nazir was unnecessary harassing the petitioner. The petitioner further made complaints against the then Nazir, Shri Nandlal Mourya to Hon'ble the Chief

Justice, High Court of Madhya Pradesh at Jabalpur (M.P.) also on 24.3.1991 (Annexure A/3) and 25.3.1991 (Annexure A/4). The petitioner was served a memo dated 17th July, 1992 (Annexure A/5) under signature of the steno to the District and Sessions Judge, Raigarh, which according to the petitioner was received on 20.7.1992. The said memo states as under:-

1. *When and to whom the petitioner made a complaint against Shri Nandlal Mourya, District Nazir?*
2. *Whether the complaint dated 24.3.1991 against Shri Nandlal Mourya, District Nazir was sent to Hon'ble the Chief Justice, High Court of Madhya Pradesh at Jabalpur through proper channel?*

The petitioner submitted his reply vide letter dated 24.7.1992 (Annexure A/6) giving details of the complaints and further stating that it was not necessary to send the complaint to Hon'ble the Chief Justice through proper channel as the copy of the same was endorsed to the District and Sessions Judge, Raigarh also.

3. The petitioner was served a memo dated 5th August, 1992 (Annexure A/7) along with a charge-sheet dated 5th August, 1992 (Annexure A/8) containing 10 charges. The containing 10 charges are as under :-

> "1– यह कि आपको कार्य पत्रक कमांक 21 दिनांक 25–10–89 के द्वारा 15 शंकायुक्त आदेशिकाएं जांच हेतु दी गई थी। ग्राम परसदा में दिनांक 26–10–89 को जांच कार्य किए जाना था परन्तु आप ग्राम परसदा न जाकर श्री नकुल प्रसाद, आदेशिका वाहक के साथ ग्राम टांगरघाट चले गये यह यात्रा स्वेच्छापूर्वक एवं अनधिकृत थी जो कि कदाचरण है।

2— यह कि आपने दिनांक 26—10—89 को ग्राम परसदा में शंकायुक्त आदेशिकाओं की जांच कार्य किए बिना जांच का असत्य प्रतिवेदन दिया, जबकि आप उक्त दिनांक को ग्राम टांगरघाट में थे।

3— यह कि आप न्यायालयों द्वारा जारी अधिपत्रों के संबंध में देनदार पक्षकार को तामीली के पूर्व ही सूचना दे देते थे जिसके कारण वसूली वारन्टों की तामीली नहीं हो पाती थी एवं निष्पादन कार्रवाई में बाधा पहुंचती थी।

4— यह कि आप नजारत अनुभाग, रायगढ़ में आदेशिका वाहकों से प्रतिमाह 100/— रूपए अवैध परितोषण प्राप्त करने हेतु उन्हें धमकी दिया करते थे, जो कदाचरण है।

5— यह कि आप आदेशिकाओं एवं शिकायत पत्रों की जांच उचित रूप से नहीं करते थे एवं असत्य प्रतिवेदन लिखकर प्रतिवेदन प्रस्तुत करते हैं। जांच के समय साक्षियों से आपका व्यवहार अभद्रता पूर्ण था।

6— यह कि आपको जिला नाजिर श्री नंदलाल मौर्य के द्वारा दिनांक 8—2—1990, 9—2—1990 एवं 10—2—1990 को न्यायालय परिसर रायगढ़ में नगर पालिका रायगढ़ से सफाई हेतु बुलाई गई गेंग के द्वारा सफाई कार्य अपनी निगरानी में कराने हेतु निर्देशित किया गया था। परन्तु आप समय पर उपस्थित होकर सफाई कार्य नहीं कराये। इस प्रकार आपने वरिष्ठ कर्मचारी के आदेशों का उल्लंघन किया।

7— यह कि आपको दिनांक 10—2—90 को जिला नाजिर द्वारा सफाई कार्य कराने हेतु निर्देशित किए जाने पर आपने इस बाबत् लिखित आदेश की मॉग की इस प्रकार आप आदेशों का उल्लंघन कर कदाचरण किए।

8— यह कि आपने माननीय मुख्य न्यायाधिपति को संबोधित शिकायत पत्र दिनांक 24—3—91 बिना उचित माध्यम का अवलम्ब ग्रहण किए सीधे माननीय मुख्य न्यायाधिपति महोदय को प्रेषित किया जो गम्भीर कदाचरण है।

9— यह कि उक्त शिकायत में श्री नन्दलाल नाजिर पर आपने अनर्गल और मिथ्या आरोप लगाये।

10— यह कि आपने शिकायती पत्र दिनांक 24—3—91 में तत्कालीन जिला न्यायाधीश, रायगढ़ पर कटाक्ष पूर्ण टिप्पणी की है जो गम्भीर कदाचरण है।

4. The petitioner submitted his reply to the above stated charge-sheet, denying all the allegations vide letter dated 12.8.1992 (Annexure A/9). The petitioner wrote an application to the District and Sessions Judge, Raigarh on 26.8.1992 for supply of following documents. The list of documents are as under :-

"1. यह कि विभागीय जॉच में दस्तावेजों की सूची में वर्णित समस्त दस्तावेजों की नकल प्रदान करने की कृपा करें।

2. यह कि दिनांक 25/10/89 एवं 26/10/89 कार्य पत्रक कं0 21 में, वर्णित प्रार्थी की नकल।

3. यह कि प्रारंभिक जॉच में जॉचकर्ता जी, अधिकारी की प्रतिवेदन नकल।

4. यह कि जिला नाजिर का शिकायत पत्र की रिपोर्ट 20/11/89 की नकल।

5. आदेशिका वाहकों का लिखित शिकायत पत्र दिनांक सहित की नकल।

6. यह कि विकय—अमीन डेली डायरी रजिस्टर दिनांक 07/02/90 से 10/02/90 तक, की रिपोट नकल।

7. यह कि दिनांक 26/10/89 ग्राम अस्पष्ट की दर्ज रिपोर्ट, जो विकय अमीन के निगरानी रजिस्टर, डेली रजिस्टर एवं कार्य पत्रक में पीछे दर्शाई गई की नकल।

8. श्री एम0सी0जैन जी, भूतपूर्व नजारत O.I.C. जी ने नजारत के, नोट शीट में जिला नाजिर नंदलाल मौर्य द्वारा जो रिपोर्ट की गई थी जिस पर से O.I.C. ने लिखा है, उसकी दिनांक सहित रिपोर्ट की (नोट शीट) नकल।

The petitioner further wrote an application to the District and Sessions Judge, Raigarh on 26.8.1992 for supply of following documents. The list of documents are as under :-

"1. प्रार्थी की मूल डेली डायरी रजिस्टर।

2. प्रार्थी की कार्य टिकट।

3- प्रार्थी की निगरानी रजिस्टर मूल

4. आदेशिका वाहकों की कार्य–पत्रक मूल, जबकि प्रार्थी नजारत में 20 माह करीब तक रहा, उस अवधि तक।

5. आदेशिका वाहों की सर्विस बुक, एवं अन्य कागजात पेश, मौके पर कराई जाने हेतु, अनुमति प्रदान करने की कृपा करें।

5. The Superintendent of the District Court, Raigarh vide his letter dated 2nd September, 1992 (Annexure A/11) and A/12) permitted the petitioner to have inspection of all the documents except documents mentioned at item No. 4 and 5 as required by his application dated 26.8.1992. With regard to requirement of documents contained at item No. 4 and 5, the petitioner was informed to give reasons asto why the said documents are required for the purpose of the departmental enquiry. In response to the communication dated 2nd September, 1992, the petitioner, vide his letter dated 5.9.1992 (Annexure A/13) submitted that the papers mentioned at item No. 4 and 5 may be produced at the time of examination of the process servers. The enquiry was held in presence of the petitioner. On the basis of the enquiry, the District and Sessions Judge, Raigarh communicated findings of the departmental enquiry with punishment holding that no second show-cause is necessary under Article 311 (2) of the Constitution of India.

6. In the present case, punishment of compulsory retirement from service was imposed on the basis of proved charges No. 1, 2, 4, 8, 9 and 10 vide the impugned order dated 8.2.1993 (Annexure A/14).

7. The petitioner preferred an appeal dated 12.3.1993 (Annexure A/15) before the Registrar, High Court of Madhya Pradesh at Jabalpur. The High Court, after having examined an appeal filed by the petitioner, affirmed the order of the District and Sessions Judge, Raigarh and rejected the appeal by letter dated 8th June, 1994 (Annexure A/16).

8. The petitioner filed this present writ petition challenging the order dated 8.2.1993 (Annexure A/14) passed by the District and Sessions Judge, Raigarh and order dated 8th June, 1994 (Annexure A/16) passed by the High Court of Madhya Pradesh at Jabalpur.

9. Shri Awadh Tripathi, learned counsel appearing for the petitioner would contend that the impugned orders dated 8.2.1993 (Annexure A/14) and 8th June, 1994 (Annexure A/16) are bad and vitiated on account of the fact that the petitioner was not served all the documents before holding the charges against him as proved. Secondly, the employees of Amin (Nazarat) including Nazir have deliberately implicated the petitioner actuated by malice as several complaints were made against the then Nazir.

10. Shri Manindra Shrivastava, learned Senior counsel with Shri Ashish Shrivastava, learned counsel for the respondent No. 1, per contra, would submit that the petitioner was allowed to have inspection of all the documents as required by him. The

documents as stated in item No. 4 and 5 were also produced before the enquiry officer in presence of the delinquent employee. Thus, the entire case of the petitioner that these charges were found proved on the basis of no documents, as all the documents were not supplied to him, is baseless and contrary to records.

11. I have heard learned counsel for the parties and perused the pleadings and records appended thereto. I have gone through the enquiry proceedings held by the District and Sessions Judge, Raigarh himself. It is evident that the petitioner was granted full opportunity of hearing and all the documents as required him were shown. In the enquiry report, the petitioner has not challenged the impugned orders of any other grounds, except that the documents, on which reliance was made for the purpose of holding those charges as proved, were not shown to him. This is factually incorrect and has no basis. The petitioner relied on letter dated 2.9.1992, whereby the petitioner was asked to give reasons asto why item No. 4 and 5 be supplied to him. In response to that, the petitioner vide his letter dated 5.9.1992 clearly stated that the documents mentioned at item No. 4 and 5, as required by the petitioner, may be produced at the time of examination of process server. The documents as mentioned at item No. 4 and 5, in the letter of the petitioner, were produced. The inspections of all the documents were done on 23.9.1992 from 1.30 p.m. to 4.15 in the office of the Superintendent, thereafter, on 25.9.1992 from 2.30 to 4.00 p.m. The register containing details of duties of process server in the year 1990-91, 91-92 and 92-93 (1993-94) was also shown to the petitioner.

12. It is well settled principles of law that the Court, while exercising its power of judicial review can go into the decision making process, but not the decision itself. In the present case, no perversity, illegality, irregularity and impropriety is alleged and found in the decision making process. The petitioner was punished with compulsory retirement.

13. The petitioner was holding the post of Amin (Najarat) in the District Civil Court. The post and responsibility of the petitioner involves faith of public in the administration of justice and the same depends on all the officers and employees, who are involved in the process. The role of Amin (Nazarat) is equally more important as he has to ensure that proper service is made on the contesting parties. The job of the petitioner is a matter of trust and the charges, which has been found proved against the petitioner, are grave in nature and the same tantamount to grave misconduct.

14. The Supreme Court in the case of **Union of India Vs. Parma Nanda**[1] observed as under:-

> "27.....It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is mala fide is

certainly not a matter for the Tribunal to concern with. The Tribunal also cannot interfere with the penalty if the conclusion of the Inquiry Officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter."

15. In case of **B.C. Chaturvedi Vs. Union of India and others**[2] observed as under:-

"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct is the eye of the Court. When an enquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold enquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappropriate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no

evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case."

16. The Supreme Court in **Govt. of T.N. and others Vs. S. Vel Raj**[3] observed that "the finding recorded by the Enquiry Officer and confirmed by the appellate authority were based upon the evidence led during the enquiry and it was not even contended that the said findings were perverse. It was, therefore, not open to the Tribunal to record contrary findings and hold that the charge against the respondent was not proved."

17. The Supreme Court in the case of **Kuldeep Singh Vs. Commissioner of Police and others**[4] observed as under:-

"9. Normally the High Court and this Court would not interfere with the findings of fact recorded at the domestic enquiry but if the finding of "guilt" is based on no evidence, it would be perverse finding and would be amenable to judicial scrutiny.

10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which would be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with."

18. In another case of **Yoginath Bagde Vs. State of Maharashtra and another**[5], the Supreme Court after considering the earlier decisions observed as under:

"51.....The law is well settled that if the findings are perverse and are not supported by evidence on record or the findings recorded at the domestic trial are such to which no reasonable person would have reached, it would be open to the High Court as also to this Court to interfere in the matter. In Kuldeep v. Commr. of Police this Court, relying upon the earlier decisions in Nand Kishore Prasad v. State of Bihar, State of Andhra Pradesh v. Rama Rao, Central Bank of India v. Prakash Chand Jain, Bharat Iron Works v. Bhagubhai Balubhai Patel as also Rajinder Kumar Kindra v. Delhi Admn. laid down that although the court cannot sit in appeal over the findings recorded by the disciplinary authority or the enquiry officer in a departmental enquiry, it does not mean that in no circumstance can the court interfere. It was observed that the power of judicial review available to a High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and the courts can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse."

19. In the case of **V. Ramana Vs. A.P. SRTC and others**[6], the Supreme Court observed as under :-

"11. The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednusbury case the court would not go into the correctness of the choice made by the administer open to him and the court should not substitute its decision for that of the administrator. The scope of judicial review is

limited to the deficiency in decision-making process and not the decision."

20. The next contention that the disciplinary proceedings were actuated by malice cannot be accepted as the proceedings were conducted by the District Judge. Purported malice on the part of the Nazir and others cannot be the ground for declaring the entire proceeding as vitiated. The petitioner would not have been exonerated from four other charges. Furthermore, when a charge has been proved, the question of exonerating the petitioner on the ground of purported malice on the part of the employer does not arise (See. **L.K. Verma Vs. HMT Ltd. and Another**[7].)

21. The Supreme Court in the case of **Govt. of A.P. and others Vs. Mohd. Nasrullah Khan**[8] observed as under :-

> "11. By now it is a well-established principle of law that the High Court exercising power of judicial review under Article 226 of the Constitution does not act as an appellate authority. Its jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. Judicial review is not akin to adjudication on merit by reappreciating the evidence as an appellate authority."

22. In another latest decision, the Supreme Court in **Syndicate Bank and others Vs. Venkatesh Gururao Kurati**[9] observed as under:-

> "18. In our view, non-supply of documents on which the enquiry officer does not rely during the course of enquiry does not create any prejudice to the delinquent. It is only those documents, which are relied upon by the enquiry officer to arrive at his conclusion, the non-supply of which would cause prejudice, being violative of principles of natural justice. Even then, the non-supply of those

documents prejudice the case of the delinquent officer must be established by the delinquent officer. It is well-settled law that the doctrine of principles of natural justice are not embodied rules. It cannot be put in a straitjacket formula. It depends upon the facts and circumstances of each case. To sustain the allegation of violation of principles of natural justice, one must establish that prejudice has been caused to him for non-observance of principles of natural justice."

23. The petitioner was afforded sufficient opportunity of hearing. All the relevant materials and documents relied on by the enquiry officer were seen by the petitioner on inspection and the same construed informed evidence for holding the petitioner guilty of the charges. Thus, the requirement of principle of natural justice is fully satisfied in the present case. The petitioner has not further proved that any prejudice to the petitioner was caused in any other manner.

24. As a result, for the reasons made hereinabove and in view of the well settled principles of law, this petition deserves to be and is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Bablu

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1. (AIR 1989 SC 1185) 2. {(1995) 6 SCC 749}
3. {(1997) 2 SCC 708} 4. {(1999) 2 SCC 10}
5. {(1999) 7 SCC 739) 6. {(2005) 7 SCC 338}
7. {(2006) 2 SCC 269} 8. {(2006) 2 SCC 373}
9. {(2006) 3 SCC 150}